

**Daniel J. Ellis d/b/a Ellis Electric and International
Brotherhood of Electrical Workers, Local 288.
Case 18-CA-12634**

August 27, 1996

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

On December 30, 1994, the National Labor Relations Board issued a Decision and Order in this proceeding,¹ in which it ordered the Respondent, *inter alia*, to make whole six named individuals for any loss of earnings suffered by reason of the Respondent's discrimination against them. A controversy having arisen over the amount of backpay due the discriminatees under the Board's Order, the Regional Director for Region 18 issued a compliance specification² and notice of hearing alleging the amounts of backpay due and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations. The Respondent subsequently filed an answer and an amended answer to the compliance specification.

On February 13, 1996, the General Counsel filed with the Board a Motion to Strike Portions of Amended Answer and for Partial Summary Judgment, with exhibits attached. On February 15, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. On March 5, the Respondent filed a Joint Resistance to Motion to Strike Portions of Amendment and Answers and for Partial Summary Judgment and Response to Motion to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

**Ruling on Motion To Strike Portions of the
Amended Answer and for Partial Summary
Judgment**

The General Counsel moves to strike those parts of the Respondent's amended answer that attempt to relitigate matters that were raised in the underlying unfair labor practice proceeding or that fail to meet the specificity requirements of the Board's Rules and Regulations. The General Counsel further moves for partial summary judgment on those allegations for which the

Respondent has answered with denials that the General Counsel moves to strike, and on those allegations of the compliance specification that the Respondent has admitted. In sum, the General Counsel seeks partial summary judgment on gross backpay computations for discriminatees Jeffrey Hicks, Ritchie Kurtenbach, Jon Mariani, and Jeffrey Fisher, on vacation pay computations for Kurtenbach and Fisher, and on the appropriateness and use of the average adjusted hours worked by a comparable group of electricians as a formula for Kendall Jacobs and the 25 total hours per week formula for Melissa Jacobs, as set forth in the compliance specification.

With respect to discriminatee Hicks, the General Counsel moves to strike those parts of the Respondent's amended answer that dispute the backpay period and the gross backpay formula in the compliance specification on the ground that Hicks falsified information about prior work experience on his job application. The General Counsel contends that the Respondent is attempting to relitigate an issue considered and decided by the Board in the underlying unfair labor practice proceeding. We agree. The Board specifically decided there that Hicks did not forfeit his right to reinstatement by misrepresenting to the Respondent his work experience. The Respondent is barred from raising this issue again as a defense at the compliance stage of the case. *Emsing's Supermarket*, 299 NLRB 569, 571 (1990); *Hiysota Fuel Co.*, 287 NLRB 1 (1987). Accordingly, we grant the General Counsel's motion to strike. All allegations in the compliance specification about the computation of Hicks' gross backpay therefore stand unanswered. We deem these allegations to be true, and we grant the General Counsel's Motion for Summary Judgment as to all matters of Hicks' gross backpay. Any hearing on matters relating to backpay for Hicks shall be limited to issues of interim earnings and the resultant computation of net backpay.

Section 102.56(b) and (c) of the Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the fig-

¹ 315 NLRB 1187.

² The compliance specification mistakenly includes two paras. numbered "11." The second of those paragraphs follows par. 12 of the compliance specification and summarizes the total backpay due to each of the six discriminatees. We shall renumber and refer to this paragraph as par. 2 Ls. 13.

ures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The General Counsel moves to strike several other portions of the amended answer concerning various gross backpay allegations in the compliance specification. As to these matters, the above Rules require more than a general denial. The Respondent must specifically state the basis for disagreement, stating in detail its position as to the applicable premises and furnishing the appropriate figures. In considering the sufficiency of the Respondent's denials, however, we examine not only its answer and amended answer but also its response to the Notice to Show Cause. The Board has held that a respondent may properly cure defects in its answer before a hearing either by an amended answer or a response to a Notice to Show Cause. See, e.g., *Vibra-Screw, Inc.*, 308 NLRB 151, 152 (1992); *Bentleys Lounge*, 265 NLRB 632 (1982), *enfd.* 116 LRRM 2096 (6th Cir. 1983).

In its response to the Notice to Show Cause, the Respondent supplemented general denials it had earlier made with more specific information about an alternative formula for computing gross backpay for discriminatee Kurtenbach for calendar quarters 1994-I through 1995-I. By offering this specific alternative, founded on a denial of Kurtenbach's automatic entitlement to annual 50-cent-hour wage increases, the Respondent has met the requirement for a hearing on the computation of Kurtenbach's gross backpay and vacation pay for these periods. We shall therefore grant summary judgment only with respect to the compliance specification's gross backpay allegations for Kurtenbach concerning calendar quarters in 1993.

With respect to discriminatees Fisher and Mariani, the Respondent has essentially admitted all gross backpay allegations in the compliance specification, including allegations concerning the computation of vacation pay for Fisher. We grant the General Counsel's Motion for Summary Judgment on these allegations. Any hearing on matters relating to backpay for Fisher and Mariani shall be limited to issues of interim earnings and the resultant computation of net backpay.

With respect to discriminatee Melissa Jacobs, the Respondent's amended answer, including the specific alternative gross backpay calculation in its response to the Notice to Show Cause, is sufficiently specific to entitle the Respondent to a hearing on all gross backpay issues beyond calendar quarter 1993-I. We shall therefore grant the General Counsel's Motion for Partial Summary Judgment only as to the appropriateness of the compliance specification's use of a 25-total-hour per week gross backpay formula for Jacobs for calendar quarter 1993-I.

Finally, with respect to discriminatee Kendall Jacobs, the Respondent's amended answer, including its response to the Notice to Show Cause, effectively admits the appropriateness of the compliance specification's gross backpay formula for the backpay period from March 7 to May 30, 1993, when the Respondent asserts Jacobs would have been discharged due to his incarceration. The General Counsel admits that the Respondent has raised a litigable issue concerning the length of the backpay period for Jacobs. We shall therefore grant summary judgment on the specification's gross backpay formula only for the period in which the Respondent admits that Jacobs would be entitled to backpay.

In sum, we grant the General Counsel's Motion for Partial Summary Judgment on all of the compliance specification's gross backpay allegations for discriminatees Jeffrey Hicks, Jon Mariani, and Jeffrey Fisher; on gross backpay allegations for discriminatee Ritchie Kurtenbach for calendar quarters 1993-I through 1993-IV; on the gross backpay formula for discriminatee Melissa Jacobs for calendar quarter 1993-I; and on the gross backpay formula for discriminatee Kendall Jacobs through May 30, 1993.

ORDER

It is ordered that the General Counsel's motion to strike portions of the Respondent's amended answer to gross backpay allegations concerning Jeffrey Hicks in the compliance specification is granted.

IT IS FURTHER ORDERED that the General Counsel's Motion for Summary Judgment is granted with respect to all gross backpay allegations for Jeffrey Hicks, Jon Mariani, and Jeffrey Fisher; gross backpay allegations for Ritchie Kurtenbach for calendar quarters 1993-I through 1993-IV; the gross backpay formula for

discriminatee Melissa Jacobs for calendar quarter 1993-I; and on the gross backpay formula for Kendall Jacobs through May 30, 1993.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 18 for the purposes of issuing a notice of hearing and scheduling the hearing before an administrative law judge, which shall be limited to taking evidence concerning paragraphs of the compliance specification as to which summary judgment has not been granted.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a supplemental decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules shall be applicable.